

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MONTANA**

In re

**LEE ORIO ARCHER, and  
VICKI BAIRD ARCHER,**

Debtors.

Case No. **04-63593-7**

***C E R T I F I C A T I O N   O R D E R***

At Butte in said District this 12<sup>th</sup> day of May, 2005.

The above-captioned Chapter 7 bankruptcy case involves a question of law arising through the interpretation of Montana exemption law under MONT. CODE ANN. (“MCA”) § 25-13-608(1)(f)<sup>1</sup>, as applied in bankruptcy through the opt-out statute of MCA § 31-2-106, and the Debtors’ right to claim an exemption under 11 U.S.C. § 522(b)(2)(A) applying State law, Mont. Local Bankruptcy Rule (LBR) 4003-1 and F.R.B.P. 4003(a), and the Trustee’s objection to Debtors’ claim of exemption pursuant to F.R.B.P. 4003(b) and Mont. LBR 4003-3. Pursuant to

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<sup>1</sup>Section 25-13-608(1)(f) provides that a judgment debtor is entitled to exemption from execution of “benefits paid or payable for medical, surgical, or hospital care to the extent they are used or will be used to pay for the care”.

M.R.APP.R. 44(c), the United States Bankruptcy Court for the District of Montana has determined that the answer to the question may be determinative of an issue in pending litigation of the certifying court and there is no controlling appellate decision, constitutional provision, or statute of this State. Accordingly, the undersigned certifies pursuant to M.R.APP.R. 44 the following question of law to the Montana Supreme Court.

A. The question of law is: Whether, under Montana's liberal construction of exemptions, a debtor may claim an exemption pursuant to § 25-13-608(1)(f) in proceeds from the sale of shares of stock in a business under an agreement to sell such stock, as exempt "benefits", when such proceeds are used exclusively to pay for the debtor's end-of-life medical, surgical or hospital care and medications.

B. The facts relevant to the question, showing the nature of the controversy out of which the question arises, which were established at hearing by sworn testimony and exhibits admitted into evidence without objection, are not disputed, are as follows:

1. Debtors in this case are married, and this case is a joint case.
2. Debtors filed their bankruptcy case on December 1, 2004.
3. The Debtors' Schedule B listing personal property lists at paragraphs 10

and 19, an asset with a current market value of \$25,000 described as: “Proceeds from sale of stock in Instrument Service, Inc., Co. which he [Lee] formed. \$1,000/mo. \$12,000/yr through 2006.” Schedule C lists Debtors’ exemptions, including a \$1,000.00 exemption in Instrument Service Inc., claimed pursuant to MCA 31-2-106<sup>2</sup>.

4. A copy of the agreement for the sale and purchase of common stock of Instrument Services, Inc., is attached hereto and identified as Exhibit A; a copy of Schedule B is attached hereto and identified as Exhibit B; and a copy of Schedule C is attached hereto and identified as Exhibit C. The ownership of the proceeds from sale of stock claimed as exempt is set forth on Schedule B as “H” for husband Lee Archer.

5. The Trustee objected to Debtors’ claimed exemptions under MCA § 31-2-106 on the ground the proceeds from the agreement for sale of common stock is not in the nature of a private retirement plan eligible for exemption under Montana Law.

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<sup>2</sup>Section 31-2-106 provides in pertinent part: “Exempt Property – bankruptcy proceeding: An individual may not exempt from the property of the estate in any bankruptcy proceeding the property specified in 11 U.S.C. § 522(d). An individual may exempt from the property of the estate in any bankruptcy proceeding: (1) that property exempt from execution of judgment as provided in . . . Title 25, chapter 13, part 6”.

6. Debtors responded<sup>3</sup> to the Trustee's objection asserting the basis for their claim of exemption in the \$1,000 monthly proceeds for sale of Lee's stock in the company he started is § 25-13-608(1)(f). Debtors admit that the \$1,000/month payment from the sale of stock is to compensate Lee for the sale of his business, but argue that Debtors are using the money as "benefits", used exclusively to pay for medication for Lee to live.

7. Debtor Lee Archer suffers from the following diseases diagnosed by physicians: Congestive heart failure, stiff heart, severe mitral regurgitation (leaky mitral valve), lymphoma, immune thrombocytopenic purpura (ITP) (an autoimmune disease), and bullous pemphigoid (an autoimmune disease of the skin). At the time of hearing in March 10, 2005, it was estimated Lee has approximately six (6) months to live, and he and his family have been advised by Lee's physician to get his affairs in order. A second opinion obtained by the Debtors for Lee confirmed the diagnosis of congestive heart failure and added a diagnosis of a form Parkinson's disease which manifests itself as tremors.

8. Debtors have some medical insurance which paid Debtors \$4,017.27 for Lee's medical care, but Lee's 2004 drug expenses totaled \$7,878.18 and their

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<sup>3</sup>Amendment of schedules is liberally allowed pursuant to F.R.B.P. 1009(a). *In re Michael*, 17 Mont. B.R. 192, 198, 163 F.3d 526, 529 (9<sup>th</sup> Cir. 1998) (citing cases).

COBRA insurance premium is increasing in May of 2005. A new drug prescribed for Lee's cancer, skin disease and rash, Cellcept, is purchased by the Debtors from Canada (the cheapest source) at \$599.21 for 150 tablets, which he consumes at a dosage of 4 per day. Ex. 1, 2, 3, and 4 admitted at trial showing Lee's illnesses, medications, medical expenses and income, are attached hereto.

9. Debtors' expenses exceed their income despite their cutting their living expenses.

10. All of the \$1,000/month contract payments from the sale of Lee's shares of stock is used to pay for the Debtors' purchase of Cellcept for Lee's cancer and skin disease, and for Lee's other medications and medical care. The evidence admitted into the record at trial shows that the medications and medical care are essential to preserve Lee's life.

C. This Court acknowledges that the Montana Supreme Court, acting as the receiving court, may reformulate the submitted question certified to it.

D. The names and addresses of counsel of record are as follows:

Debtors: Howard C. Greenwood  
P. O. Box 2016  
Hamilton, MT 59840

Richard J. Samson- Trustee  
P.O. Box 8479  
Missoula, MT 59807

IT IS ORDERED that pursuant to M.R.APP.R. 44(C) the above question of law is certified to the Montana Supreme Court with a request for an answer.

BY THE COURT

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Hon. Ralph B. Kirscher  
U.S. Bankruptcy Judge  
United States Bankruptcy Court  
District of Montana